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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
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10/550,026

06/11/2007

Bror Morein

ALBI-41848

6185

116 7590 05/22/2009
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EXAMINER

LUCAS, ZACHARIAH

ART UNIT

PAPER NUMBER

1648

MAIL DATE

DELIVERY MODE

05/22/2009

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

| | | | |
|---|--------------------------------------|--------------------------------------|--|
| Advisory Action Before the Filing of an Appeal Brief | Application No. 10/550,026 | Applicant(s) MOREIN ET AL. | |
| | Examiner Zachariah Lucas | Art Unit 1648 | |

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 18 May 2009 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 5 months from the mailing date of the final rejection.
 b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☒ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
 (a) ☒ They raise new issues that would require further consideration and/or search (see NOTE below);
 (b) ☐ They raise the issue of new matter (see NOTE below);
 (c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
 (d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: See Continuation Sheet. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
 5. ☐ Applicant's reply has overcome the following rejection(s): _____.
 6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
 7. ☒ For purposes of appeal, the proposed amendment(s): a) ☒ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
 The status of the claim(s) is (or will be) as follows:
 Claim(s) allowed: _____.
 Claim(s) objected to: _____.
 Claim(s) rejected: 1,2,4-10,12-15,18 and 20-23.
 Claim(s) withdrawn from consideration: 3,11,16,17 and 19.

AFFIDAVIT OR OTHER EVIDENCE

8. ☒ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
 9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
 10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.
 12. ☐ Note the attached Information *Disclosure Statement*(s). (PTO/SB/08) Paper No(s). _____.
 13. ☐ Other: _____.

/Zachariah Lucas/
 Primary Examiner, Art Unit 1648

Continuation of 3. NOTE: Amended claims 22 and 23 add new limitations which have not been previously examined. .

Continuation of 11. does NOT place the application in condition for allowance because: First, with respect to the Declaration by Bror Morein., it is noted that the declaration asserts that the teachings on column 9 of the Wechter reference indicate that an advantage of incorporating live attenuated particles into iscoms is to yield particles that do not introduce nucleic acids into the host. However, a reading of the cited passage of Wechter indicates that the passage indicates that Live attenuated viruses can be incorporated into iscoms. However, the next sentence appears to describe iscoms comprising not the live viruses, but only the viral capsid proteins. The reference specifically indicates that an advantages referred to in the section relate to the incorporation of viral coat protein antigens, and not to the incorporation of the live attenuated virus. Because the Applicant's argument with respect to Wechter assumes that the passage is relating an advantage of the live attenuated virus, when such is not the case, the argument is not found persuasive.

The remaining arguments are not found persuasive because they are mere argument without cited evidence. The declaration presents no evidence that those in the art would of necessiaty use a solubilization agent that would kill the microorganism to be incorporated, or that those in the art would not, as suggested by the plain language of the prior art, use agents that would not lead to such killing where it is desired that the live microorganisms be incorporated into the iscoms. Moreover, while the Applicant asserts that saponins themselves may kill the organisms, this does not account for the fact that such was recognized, and that this may be the partially the reason for incorporating the organisms into iscoms, which were also known in the art to alleviate the cytolytic activity of the saponins.

For the reasons above, and because the arguments presented by the attorney mirror those of the declaration, the arguments are not found persuasive, and the rejection is maintained. .